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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,161	09/23/2003	Kathryn F. Sykes	MCRO:002US	4356
32425	7590	06/09/2006	EXAMINER	
FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			SALIMI, ALI REZA	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,161

Applicant(s)

SYKES ET AL.

Examiner

A R. Salimi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/10/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-73 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19, drawn to method of immunizing a subject by providing the subject at least one herpes virus antigen or fragment, classified in class 435, subclass 6.
(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)
- II. Claims 20-25, drawn to an isolated polynucleotide, classified in class 536, subclass 23.1. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- III. Claims 26-31, drawn to isolated polypeptide, classified in class 530, subclass 300.
(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)
- IV. Claims 32-42, drawn to a vaccine composition comprising at least one herpesvirus antigen, classified in class 424, subclass 204.1. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**

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- V. Claims 43-55, drawn to method of screening at least one test polypeptide or test polynucleotide, classified in class 514, subclass 44. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VI. Claims 56-61, drawn to method of treating a subject infected with a pathogen, classified in class 435, subclass 5. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VII. Claims 62-65, drawn to method of raising a therapeutic immune response against reactivation disease, classified in class 436, subclass 548. **(Please note if this group is selected further select one sequence to be examined on the merits, and amend the claims accordingly, see below for explanation)**
- VIII. Claims 66-73, drawn to method of vaccination comprising administering a priming dose of herpesvirus, classified in class 435, subclass 69.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups I-VIII are mutually exclusive and patentably distinct products each are structurally and functionally different products, which are made by different methods and have different uses and delineate different results, and have different effect on interaction, antigenicity and immune response. In addition, multiple methods have different uses. Moreover, the activity of each variant peptide is different. Their structures and functionalities are different. The examination of all groups would require different searches in the U.S. Patent

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Shoes and scientific literature and would require the consideration of different patentability issues.

Upon election of any one of Groups I-VII Applicants are additionally required to elect a single Sequence identified by a specific sequence identification number, as indicated above as they apply to group(s). The recited sequences have different structures one from other and the search for the sequences would be unduly burdensome. This requirement is not to be construed as a requirement for an election of species, since each of the sequence(s) recited constitutes an independent and patentably distinct invention.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (571) 272-0909. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The Official fax number is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. R. Salimi

06/05/2006


ALI R. SALIMI
PRIMARY EXAMINER